

State of California



Fair Political Practices Commission

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Technical Assistance
(916) 322-3662

• • Administration • •
322-3660

• • Executive/Legal • •
322-3901

• • Enforcement
322-6441

October 15, 1984

Sue Lasher
Santa Clara City Council
City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Your Request for Advice,
Our Advice No. A-84-230

Dear Councilwoman Lasher:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act. My advice is based upon the facts provided in your letter and in our telephone conversations.

FACTS

You are a Santa Clara City Councilwoman. You and your family own several pieces of real property in the area of Winchester and Stevens Creek Boulevards in the City of Santa Clara. Specifically:

1) You and your brother each own one-half of a parcel at the corner of Stevens Creek Boulevard and Winchester Boulevard. The property has been leased by Crocker Bank for 25 years and the latest option has 2-1/2 years to run. It is anticipated that the bank will continue to occupy this location.

2) Your uncle, George Sorich, owns property that is contiguous and to the west of your corner lot. Until recently, this property was occupied, in part, by the Comstock Casino and a car sales lot. Mr. Sorich has removed the casino and the car lot and constructed a shopping center. In order to accomplish this change, he obtained conditioned zoning approvals which allowed the new building to be used for "community commercial" zoning. He also received a variance to reduce parking from 198 spaces (required by ordinance) to 168 spaces.

3) You and your brother each own one-half of a second lot that is contiguous and to the west of your uncle's property. This property is leased to Stevens Creek European and the lease has 3-1/2 years to run.

4) Your residence is located behind your uncle's property and across Cecil Street.

Your uncle and the owner of the Comstock Casino, Shan Mendoza, have jointly agreed to seek a special use permit to allow the relocation of the Casino into your uncle's new shopping center. If approved, the new casino will be expanded to include a restaurant, cocktail lounge and card room. In addition to the special use permit, Mr. Mendoza will seek a variance to reduce the amount of required parking spaces from 247 (required by ordinance for this type of use) to 168 (the number of spaces available) and a new cardroom permit.

You stated on the telephone that many people in the area oppose the relocation of the cardroom. When the cardroom was previously located on the lot, it generated noise, smells, traffic, parking problems and public drunkenness.

QUESTIONS PRESENTED

Government Code Section 87100^{1/} prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect,^{2/} on:

* * *

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

^{1/} See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines the terms "making," "participating," and "using your official position to influence."

^{2/} See the enclosed copy of 2 Cal. Adm. Code Section 18702 which defines the term "material financial effect."

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made....

Section 87103.

You have three real property interests near the proposed location for the Comstock Casino. Your lessees, Stevens Creek European and Crocker Bank, are sources of income to you.^{3/} If the relocation of the Comstock Casino will have a material financial effect on any of these interests, you must disqualify yourself on the decisions on the parking variance, the special use permit and the request for the license renewal because all of those decisions are integral to effectuating the relocation of the Club.

Ordinarily, we would conclude that the relocation of the Comstock Club would have a negative impact on the area surrounding it. This conclusion is supported by the fact that the people in the area of the site have actively opposed the relocation. Thus, absent some additional special circumstances, it is reasonably foreseeable that one or more of your financial interests would be materially harmed by the Club's relocation. However, during our telephone conversation, you informed me that there are special circumstances that you believe negate the possibility of such a negative impact. These circumstances are that:

1. The construction of your uncle's new shopping center makes it difficult for Club patrons to gain access to Cecil Street on which your residence is located.
2. The property occupied by Stevens Creek European is fenced, which prevents access to it.
3. Overflow parking into the Crocker Bank lot is likely to occur at night when the bank is closed.

If you are correct that, because of these special circumstances, there will be no material effect on any of your interests, you may participate in the decisions. However, as I stated on the phone, I am unable to determine whether the special facts you have provided will in fact negate the negative

^{3/} Fifty percent of the rent paid by these entities is treated as personal income to you.

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effect of the relocation. Thus I am unable to give you specific advice on this matter.

If, at any time, the facts change and you want additional advice, please feel free to contact me at 916/322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Staff Counsel
Legal Division

JSM:km

THE CITY OF SANTA CLARA

CALIFORNIA

Office of City Council

CITY HALL
1500 WARBURTON AVE.
SANTA CLARA, CA. 95050
(408) 984-3250

September 5, 1984

Fair Political Practices Commission
1100 "K" Street
Sacramento, California 95814

Attention: Barbara Milman, Esq.

Dear Ms. Milman:

I understand that Mr. Edwin J. Moore, Santa Clara City Attorney, has recently contacted Ms. Janis McLean of your offices with regard to duties I have as an elected member of the City Council of the City of Santa Clara under the "Political Reform Act of 1974" on issues which are programmed to receive City Council consideration in the near future.

MATERIAL FACTS

I am one of seven members of the City Council of the City of Santa Clara.

My Uncle George Sorich owns in fee real property on the north side of Stevens Creek Boulevard in the City of Santa Clara. The property is depicted as Sorich property on the attached aerial photograph of such area marked Exhibit "A" hereto.

My brother and I each own one half interest in the property contiguous to and east of my uncle's property above described at the corner of Stevens Creek Boulevard and north Winchester Boulevard. Exhibit "A" is so marked to showed this ownership. We have owned this property for the last 10 years, and as a partnership including my mother for 14 years prior.

At the present time our above described property is leased to the Crocker Bank. Crocker Bank has been our tenant at this location for over 25 years and the latest option has 2 1/2 years to run. I do not anticipate that Crocker Bank will cease to be our

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tenant. My brother and I also each own one half interest in the property fronting Stevens Creek Boulevard contiguous to and west of my uncle's property above described. The property is leased to Stevens Creek European and has 3 1/2 years to run.

My uncle has recently modified the structures on his property so that his buildings are now modified to extend westward over his adjoining lot which was used as a car sales lot.

The bank building my brother and I own is on a common lot line with my uncle's buildings which form an "L" shaped shopping center with parking between the shops and his buildings on Stevens Creek Boulevard. A plan of the buildings is set forth in Exhibit "B" hereto. There are no common parking easements for our bank customers to use my uncle's parking areas nor vice versa; however, there are presently no restrictions prohibiting joint use. Although there is no marking on the parking areas to designate exclusivity of use, such could be done and our Crocker Bank property could be fenced off although that is not the present intent.

I also own my residence which is north of my uncle's described property and across Cecil Street from it. I have owned this residential property for the last 10 years.

For more than 5 years last past Alexander (Shan) Mendoza has operated a card room on my uncle's property known as the Comstock Casino. The part of the building where the Comstock Casino was located was in the building segment approaching closest to Stevens Creek Boulevard immediately east of my uncle's car sales lot and furthest from our bank leased property as shown on Exhibit "A". Shan Mendoza has the only card room permit in the City of Santa Clara.

My uncle modified his building and extended it into his former car sales lot east of our Stevens Creek European lot and this is west of the former Comstock Casino shown on Exhibit "A" which has been removed.

Thus far my uncle has received conditioned zoning approvals on petitions to allow for the construction and use of the revised building for CC (Community Commercial) zoning and variance to reduce parking from ordinance required 198 spaces to 168 spaces.

Shan Mendoza has now obtained an agreement from my uncle to join with him in seeking special use permits to permit relocation and enlargement of the Comstock Casino, including restaurant,

cocktail lounge and a card room within an otherwise prohibited distance from other uses found to contribute to a skid row.

Shan Mendoza has also requested a variance to reduce parking spaces further from 247 which includes 49 more spaces than conventional retail use originally anticipated in above mentioned conditional approval to 168 and an increase in compact spaces from 30% to 36%.

If Shan Mendoza obtains the requested zoning related permits he has indicated that he will request a new card room permit issued by the City to a partnership of which he will be a general partner. He may make this request even if he does not receive the above referenced land use zoning related permits in the event he finds another location for a card room operation in the City of Santa Clara.

I have long been of the political persuasion that card room operations should be banned from the City. I would prefer no card rooms in Santa Clara, but I may vote approval of Comstock if sufficiently distant from residential properties and until the sole surviving Shan Mendoza card room permit holder dies. Shan Mendoza's attorney, Quentin Smith, knows of my position on card rooms, and has demanded that I abstain from voting on the applications for use permit and variance. I have been informed by the City Attorney that I am permitted and encouraged to vote my political beliefs so long as I do not have a financial conflict of interest prohibiting me from so voting under the Fair Political Practices Act of 1974, as amended.

Mr. Quentin Smith, attorney representing Shan Mendoza in pending zoning ordinance applications, has demanded that I not vote on the matters and on card room applications. He claims that I have consistently opposed card room related applications of his client. I have.

He more recently claimed that I might take as an heir under my uncle's estate. My uncle has other natural successors of his bounty and relatives, and I am not mentioned as a beneficiary under his will. The chance for me to take a portion of his estate is extremely remote; and if there exists such a possibility at all, it is unknown to me.

It is my considered opinion that the individual actions of granting or denying the variance for parking will not have a material financial effect on my bank leased property, the Stevens Creek European property or the value of my residence. I likewise

am of the opinion that if such permits are granted to include card room operations on my uncle's property, I anticipate that none of my properties will be materially financially affected thereby distinguishable from the effect on the public generally by such an activity.

As to both the properties my brother and I leased to Crocker Bank and Stevens Creek European, I do not believe that the value of either in the future will change at all from its present value by reason of the grant or denial of any use permit or parking variance or by the ultimate grant or denial of a card room permit to Shan Mendoza or others to have the card room operation on my uncle's property except for the adverse influence of such a gambling operation on the public generally.

Under the Crocker lease agreement with my brother and me, the income from the property will not be changed no matter the action taken on the mentioned requests. I do not anticipate any change at all in the rent schedule or that any change will be requested as a result of any action or inaction on the Shan Mendoza applications. I believe that the same is also true of the Stevens Creek European leased property. Although that is closer to the proposed new location for Comstock Casino. Such property remains fully fenced off with chain link fencing.

As to my residence at 3181 Cecil Street, San Jose, California, I am of the opinion that its value in the future will not change from its present value by reason of the grant or denial of any use permit or parking variance or by an ultimate grant or denial of a card room permit to Shan Mendoza or others to have the card room operation on my uncle's property save for the adverse influence of such a gambling operation on the public generally.

I do not intend to convert my residence into a rental but if I did I am of the opinion that the potential City Council actions herein discussed would be irrelevant to the rental received.

REQUESTED OPINION

In accordance with Government Code Section 83114(b) as implemented by your regulation 18320 in Title 2 of the California Administrative Code, I request the Fair Political Practices Commission issue an opinion with respect to my conflict of interest duties in connection with the proposed City Council action with respect to herein mentioned special use permits, variance and card room permit applications. The matters with exception of card room permit are or will be set for hearing by

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the City Council on October 16, 1984. The card room permit application would be heard thereafter. In light of the threats of litigation and the close vote anticipated and the extended period before the matter will be heard, I submit this request for written opinion at this time.

If there is any additional information or other material you might desire, please contact me so I may make it available to you. Thank you for your interest and expeditiously handling of this request for use at the approaching hearings.

Very truly yours,



SUE LASHER
Councilor

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enclosures:

Exhibit "A"
Exhibit "B"